1025.

SUPREME COURT OF THE UNITED STATES.

No. 88.

EDWARD HARDY, PLAINTIFF,

VERSUS

JESSE HOYT, (U. S.)

ON CERTIFICATE OF DIVISION OF OPINION, FROM CIRCUIT COURT, U. S., FOR SOUTHERN DIST. OF NEW YORK.

CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York, in the second circuit.

Present:

The Honorable SMITH THOMPSON, and
SAMUEL R. BETTS.

JESSE HOYT
ads.
EDWARD HARDY.

This cause came before this court, on a certiorari to the Superior Court of the city of New York, the action being in assumpsit to recover from the defendant the sum of $148 29, received by him as collector of the port of New York, for duties on an importation of silk hose. The duty was levied at the rate of 25 per centum ad-valorem, as "Hosiery," under the 2nd article of the 2nd section of the act of Congress, approved July 14th, 1832, entitled "An act to alter and amend the several acts imposing duties on imports." The plea of non-assumpsit was pleaded by the defendant in bar of the action.

It being proved that the articles imported were stockings and half-stockings, made entirely of silk, and were imported from Liverpool, in England, in the ship St. Andrew, in the month of October, in the year of our Lord one thousand eight hundred and thirty-eight, which port of Liverpool is a port this side of *of* the Cape of Good Hope; the following point was presented, during the progress of the trial, for the opinion of the judges, on which the judges were opposed in opinion, viz:

Whether the said silk hose was subject to the payment of the duty imposed on hosiery by the 2nd clause of the 2nd section of the act of July 14th, 1832, entitled "An act to alter and amend the several acts imposing duties on imports."

Or whether, as manufacturers of silk, not being sewing silk, they were exempted from the payment of duty by the 4th section of the act of March 2nd, 1833, entitled "An act to modify the act of the fourteenth of July, one thousand eight hundred and thirty-two, and all other acts imposing duties on imports," which declares, that all manufacturers of silk, or of which silk is the component material of chief value, coming from this side of the Cape of Good Hope, except sewing silk, shall be free.

Which said point, upon which the disagreement has happened, is stated above, under the direction of the judges of the said court, at the request of the counsel for the parties in the cause, and ordered to be certified into the Supreme Court of the United States, at the next session, pursuant to the act in such case made and provided.